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Attorneys for Defendant/Counterclaim Plaintiff  
OPTUMINSIGHT, INC.



UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

CAVE CONSULTING GROUP, INC.,

Plaintiff/Counterclaim  
Defendant,

vs.

OPTUMINSIGHT, INC.,

Defendant/Counterclaim  
Plaintiff.

CASE NO. 5:11-CV-0469-EJD

**STIPULATED SUBMISSION OF  
ADDITIONAL EVIDENCE FOLLOWING  
ORAL ARGUMENT ON MOTIONS FOR  
SUMMARY JUDGMENT**

Pursuant to the Court's direction at the December 12, 2014 hearing in this matter, OptumInsight hereby submits two additional documents. The first document, attached hereto as Exhibit A, is a true and correct copy of OptumInsight's Supplemental Response to Interrogatory No. 15, served March 4, 2014. The second document, attached hereto as Exhibit B, is a true, correct and complete copy of an email exchange between Paul Ackerman (counsel for OptumInsight) and Richard Brophy (counsel for CCGroup) in March 2014.

DATED: December 17, 2014

DORSEY & WHITNEY LLP

By: s/ Paul D. Ackerman

J. Thomas Vitt (*pro hac vice*)

Patricia A. Welch (Cal. Bar No. 127889)

Shannon L. Bjorklund (*pro hac vice*)

David A. Couillard (*pro hac vice*)

ANDREWS KURTH LLP

Paul D. Ackerman (*pro hac vice*)

Attorneys for Defendant/Counterclaim Plaintiff  
OPTUMINSIGHT, INC.

**ATTESTATION OF ELECTRONIC SIGNATURES**

Pursuant to Local Rule of Practice in Civil Proceedings 5-1(i)(3), the undersigned filer of this document attests that concurrence in the filing of this document has been obtained from each of the signatories.

DATED: December 17, 2014

DORSEY & WHITNEY LLP

By: s/ David A. Couillard

David A. Couillard

# **Exhibit A**

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Attorneys for Defendant and  
Counterclaimant  
OPTUMINSIGHT, INC. f/k/a INGENIX, INC.

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

CAVE CONSULTING GROUP, INC.,

Plaintiff,

v.

OPTUMINSIGHT, INC.

Defendant.

CASE NO. 5:11-CV-0469 EJD

**DEFENDANT'S SUPPLEMENTAL  
ANSWER TO CAVE CONSULTING  
GROUP, INC.'S INTERROGATORY  
NO. 15**

DEFENDANT'S SUPPLEMENTAL ANSWER TO CAVE CONSULTING GROUP, INC.'S  
INTERROGATORY NO. 15  
CASE NO. 5:11-CV-0469 EJD

1 OPTUMINSIGHT, INC.  
2 Counterclaimant,  
3 v.  
4 CAVE CONSULTING GROUP, INC.  
5 Counterdefendant.

6  
7 **GENERAL OBJECTIONS**

8 OptumInsight incorporates by reference and restates the General Objections set forth in  
9 Ingenix's Responses to CAVE CONSULTING GROUP, INC.'S FIRST SET OF  
10 INTERROGATORIES.

11  
12 **RESPONSES TO INTERROGATORIES**

13 **INTERROGATORY NO. 15:**

14 State whether the Ingenix Software, or any other software product known to Ingenix,  
15 generated physician efficiency scores using a subset of all medical conditions attributed to a  
16 specialist prior to March 2, 2003. If your answer is "yes," identify: (a) the name of the software;  
17 (b) date the software was first sold or offered for sale, or publicly used; and (c) all evidence (by  
18 Bates number) Ingenix has to support its responses to the foregoing.

19 **ANSWER:**

20 OptumInsight objects to this interrogatory to the extent that it is vague with respect to the  
21 terms "physician efficiency scores" and "subset of all medical conditions attributed to a  
22 specialist." As this interrogatory is currently understood, OptumInsight responds as follows:

23 1. (a) Impact Analysis (which is now Impact Intelligence).

24 (b) OptumInsight is still investigating the date on which Integrated Healthcare  
25 Information Services, Inc. (IHCIS) first sold or otherwise made this product publicly  
26 available, but this date is no later than September 25, 2002. See ING00006171.

27 (c) ING00005844-5937; ING00005938-6003; ING6169-6173

28 DEFENDANT'S SUPPLEMENTAL ANSWER TO CAVE CONSULTING GROUP, INC.'S  
INTERROGATORY NO. 15  
CASE NO. 5:11-CV-0469 EJD

2. (a) O'Pin Analytic Pathways/Ingenix Pathways

(b) OptumInsight is still investigating the date on which O'PIN Systems first sold or otherwise made this product publicly available, but this date is believed to be no later than 1996.

(c) ING00008108-8420; ING00008421-8667; ING0008668-8673; ING00008674-8705, ING8706-8944; ING00008945-9136; ING 000045856-45878; ING000046647-46669; ING00049275-49278.

3. (a) Procise

(b) OptumInsight's investigation is ongoing. Based on information currently available, OptumInsight responds that Procise Practice and Procise Analyzers were first sold on or about 2002.

(c) ING00006024-6083; ING00007977- 8096

**SUPPLEMENTAL ANSWER:**

OptumInsight objects to this interrogatory to the extent that it is vague with respect to the terms "physician efficiency scores" and "subset of all medical conditions attributed to a specialist." As this interrogatory is currently understood, OptumInsight responds as follows:

1. (a) Impact Analysis (which is now Impact Intelligence) and was formerly referred by specific module names, including Specialty Profile and Primary Profile .

(b) OptumInsight is still investigating the date on which Integrated Healthcare Information Services, Inc. (IHCIS) first sold or otherwise made this product publicly available under the name Impact Analysis, but this date is no later than July 5, 2001. See ING00253496-532. Upon information and belief, IHCIS was performing physician profiling services at least as early as 1998.

(c) Documents supporting this response, include: ING00005844-5937; ING00005938-6003; ING6169-6173; ING00066872-66942;- ING00067014-17; ING00067018-37; ING00067038-48; ING00071308-12; ING00071313-76; ING00071377-440; ING00080204; ING00080827-51; ING00080969; ING00080970-71; ING00080972-73; ING00080974-77; ING00080978-81; ING00080982-81008; ING00081009-22; ING00081023-102; ING00081103-145; ING00081357-81364; ING00081390-415; ING00113714-888; ING00227615-623; ING00246247-289; ING00246290-293; ING00246294-297; ING00253496-532; ING00255412-425; ING00668239-255; ING00668272-275; ING00919625; ING00919626-921249; ING00919250-923149; ING00923150-929373; ING00929374-930439; ING00930440-937924; ING00937925-938512; ING00938513-ING00940859.

2. (a) O'Pin Analytic Pathways/Ingenix Pathways

(b) OptumInsight is still investigating the date on which O'PIN Systems first sold or otherwise made this product publicly available, but this date is believed to be no later than 1996.

(c) Documents supporting this response include at least the following: ING00008108-8420; ING00008421-8667; ING0008668-8673; ING00008674-8705, ING8706-8944; ING00008945-9136; ING 000045856-45878; ING000046647-46669; ING00049275-49278.

3. (a) Procise Practice

(b) OptumInsight's investigation is ongoing. Based on information currently available, OptumInsight responds that Procise Practice and Procise Analyzers were first sold or otherwise made publicly available no later than June 2001. See ING00917995-918187.

(c) Documents supporting this response include at least the following: ING00006024-6083; ING00007977-8096; ING00077212-285; ING00077286-353; ING00077836-61; ING00078008-79; ING00078080-137; ING00078138-209; ING00081437-



1 874; ING00917439-470; ING00917734-736; ING00917741-778; ING00917779-969;  
2 ING00917970-971; ING00917972; ING00917973-994; ING00917995-918187; ING00991837-  
3 839; ING00919573-605.

4  
5 ANDREWS KURTH LLP

6 Dated: March 4, 2014

7 By: /s/ Paul D. Ackerman

8 Paul D. Ackerman  
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CERTIFICATE OF SERVICE

The undersigned counsel of record for defendant, OptumInsight, Inc. f/k/a Ingenix, Inc., hereby certifies that the attached **DEFENDANT'S SUPPLEMENTAL ANSWER TO CAVE CONSULTING GROUP, INC.'S INTERROGATORY NO. 15** was served on counsel for plaintiff by electronic mail on March 4, 2014, before 5 p.m., to the email addresses set forth below:

**Richard L. Brophy**  
Armstrong Teasdale  
[RBrophy@ArmstrongTeasdale.com](mailto:RBrophy@ArmstrongTeasdale.com)

**Scott Eidson**  
SEidson@ArmstrongTeasdale.com

**David Harlan**  
Armstrong Teasdale  
[DHarlan@ArmstrongTeasdale.com](mailto:DHarlan@ArmstrongTeasdale.com)

## **Exhibit B**

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**From:** Richard L. Brophy <RBrophy@ArmstrongTeasdale.com>  
**Sent:** Wednesday, March 19, 2014 11:50 AM  
**To:** Ackerman, Paul; Scott Eidson; David W. Harlan; Mark A. Thomas  
**Cc:** Vitt, Thomas; Levitt, Kenneth; Bjorklund, Shannon; Couillard, David; Scanlon, Laurie  
**Subject:** RE: Cave v. OptumInsight [IWOV-idocs.FID2188648]

Paul,

Thank you for your email.

We disagree with your position and will move to strike any evidence, testimony or expert report offered by OptumInsight that relies on evidence that was not properly disclosed under the applicable local rules.

Thanks,  
Richard



Armstrong Teasdale LLP

**Richard L. Brophy** | Attorney – IP Litigation

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rbrophy@armstrongteasdale.com

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---

**From:** Ackerman, Paul [mailto:PaulAckerman@andrewskurth.com]  
**Sent:** Monday, March 10, 2014 2:58 PM  
**To:** Richard L. Brophy; Scott Eidson; David W. Harlan; Mark A. Thomas  
**Cc:** 'Vitt.Thomas@dorsey.com'; Levitt.Kenneth@dorsey.com; bjorklund.shannon@dorsey.com; couillard.david@dorsey.com; Scanlon.Laurie@dorsey.com  
**Subject:** RE: Cave v. OptumInsight [IWOV-idocs.FID2188648]

Richard,

Responding to your email below, it is our position that OptumInsight's First Amended Invalidity Contentions properly detail the invalidity defenses based on the Impact Analysis, O'Pin Pathways and Procise Practice systems. The documents identified in Interrogatory No. 15 do not alter these theories of invalidity nor do they add new theories of invalidity. Rather, these documents may be relied upon to provide historical foundation and additional evidentiary corroboration for the positions that have been properly detailed in the invalidity contentions.

For example, with respect to Impact Analysis, contract documents such as the June 4, 2002 Services Agreement and Task Order with Presbyterian Healthcare Services (ING81357-61; ING81390-81410) provide evidentiary support for the contention that Impact Analysis was sold more than a year prior to the filing date of the '126 patent. (See also, Blue Cross Blue Shield-MA Impact Documentation - July 5, 2001, showing that Impact Analysis was known by others prior to Cave's invention date (ING00253496-531)). A press release dated September 25, 2002 identifies Presbyterian as an

IHCIS customer for Impact Analysis. (ING6171). Sample reports generated by Impact Analysis, such as ING66272-27, ING24690-293, ING246294-297, provide corroboration that the Impact Analysis system detailed in OptumInsight's invalidity contentions was indeed being commercially used to service IHCIS customers. The SAS code, *e.g.*, ING 246290-293, ING 246294-297 and ING 921250-938512, further confirms that Impact Analysis was known and used prior to March 2, 2003 (as well as Cave's alleged invention date of March 14, 2002), and may also be relied on to establish how the features previously identified and relied upon in Optum's invalidity contentions were actually performed by the system. None of this evidence, however, alters the theories of invalidity presented in Optum's invalidity contentions, *e.g.* that Impact Analysis anticipates the asserted claims of the '126 patent, as CCGroup has construed and applied those claims, as detailed in the claim charts of Exhibit B of those contentions.

We clearly do not agree with your position that the documents identified in Interrogatory No. 15 are "prejudicial to CCGroup in ways that cannot be cured at this late stage in the case." As noted above, the documents are complementary proof of defenses that have been properly detailed in OptumInsight's contentions since the beginning of the case. Cave received these documents, which on their face identify the systems they apply to, well before deposing any relevant witness. Moreover, as the documents were produced, the subject matter of the documents was expressly identified for your team (See, *e.g.*, Laurie Scanlon's email of November 14, 2013, "These documents [ING81310-81436] include additional agreements relating to Impact Analysis." Laurie Scanlon's email of November 22, 2013, "The majority of this production includes the beginning of a rolling production of Electronic Discovery files being produced pursuant to agreement of the parties and as set out in the Stipulated Protocol for Electronic Discovery (ING00081875-ING00246243), along with a small number of marketing summaries/presentations, and documents relating to Impact Analysis.") In short, not only was Cave on clear notice of Optum's invalidity defenses, but Cave was also clearly on notice that the documents now identified in Interrogatory No. 15 relate to OptumInsight's invalidity defenses set forth in its invalidity contentions. Cave will have additional opportunity to examine witnesses on these documents, and on Optum's invalidity case, during the expert phase of the case. This includes Dan Dunn, who we anticipate naming as an expert witness for trial, in addition to his role as a fact witness.

Although the documents were located within Optum's facilities, as you are aware, the documents in question are over ten years old and many of these documents were created prior to the acquisition of the companies that created them. The documents were not located in formal document repositories of the company and were found only after a continuing and diligent search and were promptly produced once they were located.

We do not believe that the Local Rules or case law require supplementation or amendment of OptumInsight's invalidity contentions to identify each piece of evidence that may be used to corroborate or otherwise prove invalidity theories that are detailed in the invalidity contentions. See *e.g.*, *Genentech, Inc. v. Trustees of the University of Pennsylvania*, 2012 WL 424985 @ 4; *Oracle America, Inc. v. Google, Inc.*, 2011 WL 4479305 (N.D. Cal. Sept. 26, 2011). If you disagree, and Cave intends to move to strike any expert testimony relying on the documents identified in response to Interrogatory No. 15 or otherwise move to preclude OptumInsight's use of such evidence at trial due to the documents not being listed in Optum's initial invalidity contentions, please let us know (as well as the basis for this position) so that we can promptly decide whether to bring this issue to the Court's attention now and either seek leave to amend the invalidity contentions or obtain confirmation from the Court that such complementary proof is admissible in support of OptumInsight's contentions.

Regards,

Paul

**Paul D. Ackerman**  
Partner

**Andrews Kurth LLP**  
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---

**From:** Richard L. Brophy [<mailto:RBrophy@ArmstrongTeasdale.com>]  
**Sent:** Tuesday, March 04, 2014 6:33 PM  
**To:** Ackerman, Paul; Scott Eidson; David W. Harlan; Mark A. Thomas  
**Cc:** 'Vitt.Thomas@dorsey.com'; [Levitt.Kenneth@dorsey.com](mailto:Levitt.Kenneth@dorsey.com); [bjorklund.shannon@dorsey.com](mailto:bjorklund.shannon@dorsey.com); [couillard.david@dorsey.com](mailto:couillard.david@dorsey.com); [Scanlon.Laurie@dorsey.com](mailto:Scanlon.Laurie@dorsey.com)  
**Subject:** RE: Cave v. OptumInsight [IWOV-idocs.FID2188648]

Paul,

OptumInsight's recent amendment of its Interrogatory Responses, which identify certain documents, appear to be a prelude to a request for leave to amend its invalidity contentions. Please let me know immediately if that is the case.

So you are aware, we will oppose any request to amend as untimely and prejudicial to CCGroup in ways that cannot be cured at this late stage in the case. Moreover, it appears at first glance that the referenced documents have been in OptumInsight's control since the beginning of this case over 3 years ago.

Richard



Armstrong Teasdale LLP

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---

**From:** Ackerman, Paul [<mailto:PaulAckerman@andrewskurth.com>]  
**Sent:** Tuesday, March 04, 2014 2:45 PM  
**To:** Richard L. Brophy; Scott Eidson; David W. Harlan; Mark A. Thomas  
**Cc:** 'Vitt.Thomas@dorsey.com'; [Levitt.Kenneth@dorsey.com](mailto:Levitt.Kenneth@dorsey.com); [bjorklund.shannon@dorsey.com](mailto:bjorklund.shannon@dorsey.com); [couillard.david@dorsey.com](mailto:couillard.david@dorsey.com); [Scanlon.Laurie@dorsey.com](mailto:Scanlon.Laurie@dorsey.com)  
**Subject:** Cave v. OptumInsight

Counsel:

Attached please find OptumInsight's supplemental response to Cave Consulting's Interrogatory No. 15.

Best regards,

Paul

**Paul D. Ackerman**  
Partner

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